IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.599-SB of 1995

Date of Decision: April 18, 2007

Chanan Singh & another

...Appellants

VERSUS

The State of Punjab

...Respondent

Criminal Appeal No.600-SB of 1995

Date of Decision: April 18, 2007

Sohan Singh and another

...Appellants

VERSUS

Chanan Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.K.Battas, Advocate,
for the appellant in Crl.Appeal No.599-SB of 1995.

Mr.J.S.Mehandiratta, Advocate,
for the appellants in Crl.Appeal No.600-SB of 1995.

None for respondent No.1 in
Crl.Appeal No.600-SB of 1995.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

*****

RANJIT SINGH, J.

Through this order, the above-mentioned two connected appeals are being disposed of together as one of these arises out of a cross-case. The facts are being taken from Criminal Appeal No.599-SB of 1995.

Chanan Singh and his sons Amarjit Singh and Jaswinder Singh were prosecuted for offences under Sections 450, 326, 325, 324 and 34 IPC. One Pritam Kaur accused could not be arrested and was declared proclaimed offender. However, her name as well as that of Jaswinder Singh was shown in column No.2 in report under Section 173 Cr.P.C. This case was registered on 5.2.1989 on the statement of one Sohan Singh, who is none other than the real brother of Chanan Singh accused. Sohan Singh complains that on 4.2.1989 when he was present in his Haveli at village Sujokalia, then all the accused and Pritam Kaur, while present in the adjoining Haveli, exclaimed that complainant be taught a lesson for not allowing them to use tubewell. As per the complainant, Amarjit Singh and Jaswinder Singh armed with knives and other empty handed came to his Haveli. Jaswinder Singh gave three knife blows one

after another below his left eye and on the eye brow. Amarjit Singh allegedly inflicted knife blow below his right eye, whereas Chanan Singh had given fist blow on the left eye. As per the allegations, Pritam Kaur gave fist blow on the left temple of Sohan Singh. In the meanwhile, Lachhman singh son of Sunder Singh and Sohan Singh Lamberdar came there and witnessed the occurrence. The accused persons ran away from the scene. Sohan Singh complainant was taken to Civil Hospital at Sultanpur Lodhi where he was medically examined. On a statement made by Sohan Singh, a case was registered on 5.2.1989.

In support of its case, the prosecution examined six witnesses, three out of whom are doctors and one is Investigating Officer. Sohan Singh complainant and Sohan Singh Lamberdar appeared to unfold the eye-witness account of the occurrence. The appellants in their defence denied the allegations made against them. Chanan Singh appellant disclosed that he had a common tubewell with Sohan Singh, his brother, who disconnected the tubewell connection on 4.2.1989. When he protested, Sohan Singh complainant and his son Balbir Singh dragged him to their Haveli. Appellant Chanan Singh gave a push to Sohan Singh to save himself when he fell on the tiller and suffered injuries. As per Chanan Singh, other accused were not present at the scene of occurrence, which was seen by Mukhtiar Singh and Dalbir Singh. Amarjit Singh appellant pleaded false implication, whereas Jaswinder Singh accused raised plea of alibi by saying that he was present at Chandigarh at the time of alleged occurrence. They examined Harbans Singh (DW-1), Dr.Viney Ved Vias (DW-2), Piara Singh (DW-

3) and Dr.B.K.Goel (DW-4) in their defence. Dr.Viney Ved Vias appeared to state that he had examined Jaswinder Singh as OPD patient, who was suffering from jaundice, whereas Dr.B.K.Goel deposed about the medical examination of appellant Chanan Singh that three injuries that he had suffered were by sharp edged weapon and another two by a blunt weapon. After conviction, appellant Chanan Singh was sentenced to suffer rigorous imprisonment for four months under Section 326/34 IPC, rigorous imprisonment for three months under Sections 324/34 IPC and rigorous imprisonment for three months under Section 323 IPC, whereas appellant Amarjit Singh was sentenced to suffer rigorous imprisonment for one year under Section 326 IPC coupled with fine of Rs.1000/-, in default of payment of fine to undergo rigorous imprisonment for one month. Amarjit Singh was further sentenced to suffer rigorous imprisonment for three months under Section 323 and 324 IPC each. All the sentences of both the appellants were ordered to run concurrently.

In a cross case instituted at the instance of Chanan Singh, it is alleged that Sohan Singh and Balbir Singh were seen snapping the tubewell connection to which he raised objection. They both then dragged him near to pond of motor and caused him injuries with dang. Meanwhile, Balbir Singh brought datar and aimed a blow on his head which he warded off with hand, which thus got injured. As per Chanan Singh, Sohan Singh was drunk and fell on tiller lying there and suffered injuries. Sohan Singh and Balbir Singh were accordingly proceeded against for an offence under Sections 326/323/452/441 IPC. They both were convicted for offence under Sections 326 and 323 IPC. Sohan Singh sentenced to suffer rigorous

imprisonment for four months under Section 326/34 IPC and fine of Rs.1000/-, in default of payment of fine to undergo rigorous imprisonment for one month. Balbir Singh, however, was sentenced to suffer rigorous imprisonment for one year under Section 326 IPC and fine of Rs.1000/- and one month rigorous imprisonment in default of payment of fine. Both were sentenced to three months rigorous imprisonment for offence under Section 323 IPC.

Mr.R.K.Battas, the counsel appearing for the appellants (Chanan Singh etc.) has attacked their conviction on number of grounds. He submits that the prosecution has not succeeded in proving injury No.5 to be grievous in nature as X-ray report and skiagram were not brought on record. Even the Radiologist was also not examined. As per the counsel, Dr.D.C.Aggarwal was not in a position to prove the report, Exh.PA, which was given by Dr.Charanjit Lal. The counsel would further submit that the nature of injuries suffered by Sohan Singh complainant are such, which could not probably have been caused with a knife. As per the counsel, it is difficult to cause injury with precision on the eyes as made out by prosecution and it sounds more probable that the complainant suffered these injuries due to fall on the tiller. He would also refer to the investigation, whereby Jaswinder Singh and Pritam Kaur were found innocent to urge that the chances of false implication of appellants could not be ruled out, specially so when concededly the case and counter case was lodged by two real brothers, who had this fight over the use of common tubewell. The counsel has highlighted the fact that the complainant, brother of Chanan Singh appellant even has not spared his niece, daughter of Chanan Singh and has

made false allegation against her as well.

Mr.M.C.Berry, Senior Deputy Advocate General, Punjab, on the other hand, would say that the version of prosecution is well supported by the complainant and the independent witness Sohan Singh Lamberdar. Enmity being a double edged weapon can clearly be used against the appellants to say that indeed this fight had taken place, whereby they had caused injuries to the complainant, Sohan Singh.

It is seen that the allegations are made by the complainant against his brother Chanan Singh and his two sons Amarjit Singh and Jaswinder Singh and his daughter Pritam Kaur. Jaswinder Singh was acquitted by the trial court by believing the defence of alibi raised by him. He was found to be suffering from jaundice for which he received treatment at Chandigarh. It stood substantiated by the evidence of an independent witness, like Dr.Viney Ved Vias. The trial court also rightly concurred with the investigating agency that Jaswinder Singh was innocent and perhaps was named by Sohan Singh being un-aware of his sickness and treatment that he was receiving at Chandigarh. Trial court, however, did not believe the theory as projected by the defence that knife blows could not have been given on the eye or near thereto as was urged by the defence on the basis of evidence given by a doctor. It may be true that injuries could be caused near to the eyes of the complainant with knife, but this would need to be appreciated in the context of defence version and to see if it would sound probable or not. As per the appellants, complainant Sohan Singh suffered injuries due to fall on the tiller. Though injuries could have been caused with

knife near the eyes, but chances of knife injury being precisely caused near to the eyes are remote and not very easy to cause. Use of knife generally can be expected on the other parts of the body, like chest, stomach etc. rather than precisely on to the eyes. A natural reaction of a human being would be to save himself from the injury being caused on the eye by ducking or otherwise reaching to it and under these circumstances, it would rather be difficult to cause an injury near the eye. It sounds more probable that the complainant suffered injuries due to his fall on the tiller as it would appear more probable that he sustained such injuries on his eyes by this mode. The theory projected by the defence, as such, would sound more probable than the one projected by the prosecution. Even otherwise, it is conceded that the Radiologist was not produced by the prosecution to prove the X-ray report of the skiagram, which could establish that injury No.5 was grievous. In support of his submission, defence has relied upon the case of ***Balwant Singh and others Versus State of Punjab, 1979 Punjab Law Reporter 37***. This case was distinguished on the ground that the prosecution has withheld the X-ray report and had not produced the secondary evidence to prove the same. Relying on the version of Dr.D.C.Aggarwal, the court held that it was sufficient to prove that the injury was grievous in nature. It was essential to prove on record the basis on which this injury was opined to be a grievous in nature. The prosecution in order to succeed has to prove its case beyond shadow of any reasonable doubt. The defence, however, would succeed on the preponderance of probabilities. The defence projected by the appellants, if probable, than it would go to cast doubt on the story of prosecution.

Considering the totality of the circumstances, where Sohan Singh complainant was found to have falsely named Jaswinder Singh, who was acquitted by the trial court and had even not spared the daughter of his own brother, the chances of his coming out with exaggerated version to blame his brother and close relations due to enmity cannot be ruled out. Considering the nature of injuries and in the absence of medical evidence to show their nature with assurance, it can be said that the theory projected by the defence sounds more probable that complainant Sohan Singh suffered these injuries because of fall on the tiller. There was delay of 23 hours in lodging the complaint, which had remained un-explained. This would be an added reason to view that Sohan Singh complainant had taken sufficient time to deliberate and thus name the persons, one of whom was found innocent and not involved in the incident. I am inclined to hold that prosecution has failed to establish the charge beyond reasonable doubt. The appeal is accordingly allowed and the conviction and the sentence awarded to the appellants is set-aside.

For the reasons recorded above, it is doubtful if the story projected by the present appellants against complainant Sohan Singh and Balbir Singh would sound true. Both the sides have attempted exaggerated roles. The evidence shows that in a case of fight over the common tubewell, this scuffle took place, whereby Sohan Singh complainant fell on tiller to receive these injuries. Fearing that Sohan Singh would file a case, which he did, Chanan Singh made a complaint as a counter-blast to the case filed by Sohan Singh. The story projected by Sohan Singh has been doubted. It would not be safe to place implicit reliance on the version

of Chanan Singh, who was bound to project his defence to save himself for the allegations made against him. Giving benefit of doubt, the conviction of the appellants, Sohan Singh and Balbir Singh cannot be maintained with assurance.

Both the appeals are, thus, allowed and the conviction of the appellants in the respective appeals are set-aside. Bail bonds, if any, furnished by the appellants in the appeals would stand discharged.

April 18, 2007 (RANJIT SINGH)
ramesh JUDGE